Office-Supreme Court, U.S.
FILED
SEP 19 1967
JOHN F. DAVIS, CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1967

No. 523

H. SAMUEL HACKIN, Appellant,

v.

STATE OF ARIZONA, Appellee

ON APPEAL FROM
THE SUPREME COURT OF ARIZONA

MOTION TO DISMISS

ROBERT K. CORBIN
Maricopa County Attorney
400 Superior Court Bldg.
Phoenix, Arizona 85003

H. LOUIS HISER
Deputy County Attorney
Attorneys For Appellee

In The
Supreme Court of the United States

OCTOBER TERM, 1967

No. 523

H. SAMUEL HACKIN, Appellant,

v.

STATE OF ARIZONA, Appellee

MOTION TO DISMISS

COMES NOW the appellee herein, STATE OF ARIZONA, by and through ROBERT K. CORBIN, County Attorney of Maricopa County, Arizona, and moves this Honorable Court, pursuant to Rule 16, Rules of the Supreme Court, 28 U.S.C., to dismiss the appeal heretofore filed in this cause on the following grounds:

1. This cause does not present to the Court a substantial federal question.

2. The decision of the State of Arizona clearly rests on an adequate non-federal basis.

OPINION BELOW

The opinion of the Arizona Supreme Court is now reported in 427 P.2d 910, ... Ariz., ..., and is set out in appellant's Jurisdictional Statement as Appendix "A".

QUESTIONS PRESENTED

1. Whether one not admitted to practice before the bar of the State of Arizona, other than one appearing in propria persona, after filing a petition for a writ of habeas corpus in accordance with Arizona Revised Statute Section 13-2002 (1956) may then appear in open court as an advicate on behalf of petitioner at the hearing on the writ.

2. Whether or not the appearance in open court of one not admitted to practice before the bar of the State of Arizona as an advocate for a petitioner for a writ of habeas corpus constitutes the unauthorized practice of law in accordance with Arizona Revised Statutes Section 32-261 (1956).

STATEMENT

The action below arose on a petition for habeas corpus to the Arizona Supreme Court in which the Court was asked to determine whether appellant, H. SAMUEL HACKIN, had lawfully been convicted and sentenced to fifteen (15) days in the Maricopa County Jail on a charge of violating Arizona Revised Statute Section 32-261 (1956) prohibiting any person from practicing law in the state unless he is an active member of the state Bar, a misdemeanor. Appellant had been found guilty by a jury in the Justice Court of West Phoenix Precinct, then appealed to the Superior Court of Maricopa County, Arizona, where his conviction was upheld and the fifteen (15) day sentence was imposed. The charge of unauthorized practice of law arose on October 24, 1966, when appellant represented one Jasper Winnegar in a hearing upon a petition for habeas corpus, which had been filed by appellant on Winnegar's behalf in accordance with Arizona Revised Statute Section 13-2001 (1956),

conducted in the Superior Court of Maricopa County, Arizona. The appellant is not now, nor was he them, a licensed attorney. Appellant was advised at the time by a deputy county attorney that should he insist on representing Winnegar in court he would be subject to prosecution for violation of a state law, i.e. Arizona Revised Statute Section 32-261 (1956), prohibiting the unauthorized practice of law. However, because the court refused to appoint counsel for Winnegar upon appellant's request, the appellant chose to conduct the hearing on Winnegar's behalf. Thereafter the charges for which he stands convicted were brought against appellant.

Arizona Revised Statutes Section 32-261 (1956) provides:

> A. No person shall practice law in this state unless he is an active member of the state bar in good standing as defined in this chapter.
>
> B. A person who, not being an active member of the state bar, or who after he has been disbarred, or while suspended from membership in the state bar, practices law is guilty of a misdemeanor.

The prohibition of this provision is, however subject to the following limitation set out in Arizona Revised Statute Section 13-2002 (1956), regarding the writ of habeas corpus:

> Application for the writ shall be made by verified petition, signed either by the party for whose relief it is intended or by some person in his behalf, and shall state that the person in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the place where, and the officer or person by whom he is so confined or restrained, naming all the parties, if they are known, or describing them if they are not known. If the imprisonment is alleged to be illegal, the petition shall also state the particulars of the alleged illegality.

Appellant's petition for a writ of habeas corpus to the Arizona Supreme Court was denied May 17, 1967.

ARGUMENT

The primary question raised by appellant is whether one not admitted to practice before the bar of the State of Arizona, other

than one appearing in propria persona, after filing a petition for habeas corpus in accordance with the statute, may then go into open court and argue the merits of the application.

Appellant relies primarily on *Johnson v. Avery*, 252 F. Supp. 783 (1966) as authority for his proposition that a third party, not admitted to practice law, may represent a prisoner in court in habeas corpus proceedings. The case does contain a good discussion of the right of a prisoner to the assistance of a third party, whether or not admitted to practice law, in preparing and filing a petition for a writ of habeas corpus. It points out that

> For all practical purposes, if such prisoners cannot have the assistance of a 'jail-house lawyer', their possibly valid constitutional claim will never be heard in any court.

But the case does not, either in its decision or dicta, consider the question of whether that same third party may represent the petitioner in open court. As pointed out by the Arizona Supreme Court in its opinion, 427 P.2d 910, 911:

> Once before the court, however, the purpose of the writ and the statute has been served. No longer is it necessary for the prisoner's family or friends to act in his behalf. The matter is then in the hands of the court which is well acquainted with the law, and whose duty it is to determine the legality of the petitioner's detention. See A.R.S. Sec. 13-2010. It is true that a lawyer to represent the petitioner may well be helpful to the court in its legal consideration of the matter, but this is due to a lawyer's special training and knowledge of the law. He can provide a service which a layman cannot, the very reason why a person is required to be licensed before he is permitted to practice law. Also, the legal knowledge needed to represent a man in court is not needed in preparing an application for habeas corpus which 'properly contains allegations of fact alone, and * * * legal arguments are not a proper part thereof.' *State of Oregon ex rel. Sherwood v. Gladden*, 240 F.2d 910 (9th Circuit); see *Johnson v. Avery*, D.C., 252 F.Supp. 783. We are not prepared, therefore, to say that a layman is any more able to represent a person in a habeas corpus proceeding than he is in any other legal proceeding. A layman has done his deed by assisting the petitioner to get before the court.

There is no doubt of the sacrosanct position of the writ of habeas corpus in our scheme of constitutionally protected freedoms. It provides the means by which a prisoner, in propria persona or through a third party, may call to the attention of the courts his detention in violation of his rights. However, neither the Arizona statute nor its federal counterpart, 28 U.S.C. Sections 2242 (1959), have yet been held to permit the representation of a petitioner for a writ of habeas corpus by a third party not admitted to practice law. The federal statute providing for hearing of the writ, 28 U.S.C. Section 2243 (1959) provides that:

> The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

Appellant contends that this provision grants carte blanche to the "applicant" to "prosecute" the writ in open court, and not as the plain wording of the statute would suggest to appear as a witness at the hearing. As the Arizona Court well expressed it (supra), "We are not prepared to say therefore, that a layman is any more able to represent a person in a habeas corpus proceeding than he is in any other proceeding." The Arizona Court has interpreted its habeas statute to permit a third party layman to assist in preparing and filing a petition for a writ of habeas corpus but prohibiting that same layman from appearing in open court as advocate for the petitioner at the hearing on the writ. The Supreme Court of the United States has a tradition of deferring to a state court's interpretation of state statutes. *Bell v. State of Maryland*, 378 U.S. 226, 84 S. Ct. 1814, 12 L. Ed. 2d 822. The courts of a state alone may define the authoritative meaning of state law. *United States Gas Pipe Line Co. v. Ideal Cement Co.*, 369 U.S. 134, 82 S. Ct. 676, 7 L. Ed. 2d 623.

Appellant next contends that a single appearance in court on behalf of another does not constitute the practice of law, particularly where the "single act was not even completed, for counsel was finally appointed for the indigent prisoner." A fortiori, carrying appellant's argument to its logical conclusion

one could perform one prefrontal lobotomy without being guilty of the unauthorized practice of midicine, particularly if one did not finish the operation.

Appellant cites *State Bar of Arizona v. Arizona Land Title and Trust Co.*, 90 Ariz. 76, 366 P.2d 1, as authority for the proposition that "it is impossible to lay down an exhaustive definition of 'the practice of law'." He neglects to inform the court that the Arizona Supreme Court went on in that case to order the entry of the following declaratory judgment:

> It is ordered, adjudged and decreed that those acts, whether performed in court or in the law office, which lawyers customarily have carried on from day to day through the centuries constitute the practice of law. Such acts include, but are not limited to, one person assisting or advising another in the preparation of documents or writings which affect, alter or define legal rights; the direct or indirect giving of advice relative to legal rights or liabilities; the preparation for another of matters for courts, administrative agencies and other judicial or quasi-judicial bodies and officials as well as the acts of representation of another before such a body or officer. They also include rendering to another any other advice or services which are and have been customarily given and performed from day to day in the ordinary practice of members of the legal profession either with or without compensation.

In the present case as the court below pointed out in its opinion:

> One who represents another in court, be he an indigent or not, is, under our adversary process, going to the very core of the ptactice of law, a fact with which even the most uninformed persons are well aware . . . Thus the outer boundaries of the 'practice of law' are not here in question, and we can only conclude that the statute here in question was sufficiently definite to inform the defendant that his act of representing Jasper Winnegar was in violation of the law. *State v. Hackin, supra.*

Appellant cannot rely on any purported vagueness in the Arizona statute in defining the unauthorized practice of law where he himself is not charged with a crime not clearly covered by the statute. Here defendant is charged with appearing

in open court as an advocate for another after having been clearly warned by a deputy county attorney, in the presence of the court, that he might be charged with unauthorized practice of law if he persisted. See pages 1 through 6 of reporter's transcript of "In the Matter of Application of Jasper F. Winnegar" attached to appellant's Jurisdictional Statement as Exhibit "1".

Whether or not one has a right to court appointed counsel in habeas corpus proceedings is a collateral matter and not properly an issue in this case.

CONCLUSION

The judgment appealed from clearly rests on adequate state grounds and raises no substantial federal question. For the foregoing reasons it is respectfully submitted that the appeal should be dismissed.

Dated this ..... day of September, 1967.

ROBERT K. CORBIN
Maricopa County Attorney

H. Louis Hiser
Deputy County Attorney
Attorney for Appellee

Copy of the foregoing served
this.....day of September, 1967,
on Appellant, H. SAMUEL HACKIN

.....
H. Louis Hiser

Service acknowledged this.....
day of September, 1967,

.....
H. Samuel Hackin